

§ 4-1501.01. Short title

This chapter may be cited as the "Criminal Background Checks for the Protection of Children Act of 2004".

§ 4-1501.02. Definitions

For the purposes of this chapter, the term:

(1) "Applicant" means an individual who has filed a written application for employment with a covered child or youth services provider or an individual who has made an affirmative effort through a written application or a verbal request to serve in an unsupervised volunteer position with a covered child or youth services provider.

(2) "Children" means individuals 12 years of age and under.

(3) "Covered child or youth services provider" means any District government agency providing direct services to children or youth and any private entity that contracts with the District to provide direct services to children or youth, or for the benefit of children or youth, that affect the health, safety, and welfare of children or youth, including individual and group counseling, therapy, case management, supervision, or mentoring. The term "covered child or youth services provider" does not include foster parents or grantees.

(4) "Criminal background check" means the investigation of an individual's criminal history through the record systems of the Federal Bureau of Investigation and the Metropolitan Police Department.

(5) "Employee" means an individual who is employed on a full-time, part-time, temporary, or contractual basis by any covered child or youth services provider.

(6) "FBI" means the Federal Bureau of Investigation.

(7) "MPD" means the Metropolitan Police Department.

(8) "Supervised" means any person who is under the direct supervision, at all times, of an employee or a volunteer who has received a current, satisfactory criminal background check.

(9) "Volunteer" means an individual who works without any monetary or any other financial compensation for a covered child or youth services provider.

(10) "Youth" means an individual between 13 and 17 years of age, inclusive.

§ 4-1501.03. Criminal background checks required for certain individuals

(a) Except as provided in subsections (b), (c), and (d) of this section, the following individuals shall apply for criminal background checks in accordance with the requirements of § 4-1501.05 and any regulations issued pursuant to § 4-1501.11:

(1) An applicant who is under consideration for paid employment by a covered child or youth services provider;

(2) An applicant who is under consideration for voluntary service in an unsupervised position by a covered child or youth services provider;

(3) An employee of a covered child or youth services provider; and

(4) A volunteer who serves a covered child or youth services provider in an unsupervised position.

(b) An applicant for, or an employee or a volunteer working in, a position at a covered child or youth services provider that will not bring the employee or volunteer in direct contact with children and youth is not required to submit to a criminal background check.

(c) A volunteer at a covered child or youth services provider who has only supervised contact with children or youth is not required to submit to a criminal background check, but may be required to submit to a traffic check pursuant to § 4-1501.04(b)(2).

(d) An applicant for, or an employee or a volunteer working in, a position at a covered child or youth services provider that will bring the employee or volunteer in direct contact with children and youth is not required to submit to a criminal background check if the applicant, employee, or volunteer has an active federal security clearance.

(e) An applicant for a position at a covered child or youth services provider may be offered employment contingent upon receipt of a satisfactory background check, and may begin working in a supervised setting prior to receiving the results.

(f) A volunteer serving any covered child or youth services provider in a position that brings the volunteer in direct contact with children shall not be allowed to begin volunteering in an unsupervised setting until the results of the criminal background check have been received and determined to be satisfactory.

(g) An employee or unsupervised volunteer shall be required to submit to periodic criminal background checks while employed by or volunteering at any covered child or youth services provider in an unsupervised setting.

§ 4-1501.04. Authorization to obtain records

(a) The Mayor may obtain criminal history records maintained by the Federal Bureau of Investigation and the Metropolitan Police Department, and traffic records maintained by the Department of Motor Vehicles, to investigate a person applying for employment, in either a compensated position or an unsupervised volunteer position, with any covered child or youth services provider, and to investigate each current employee and unsupervised volunteer serving any covered child or youth services provider.

(b) Before any applicant for employment with any covered child or youth services provider may be offered a compensated position or an unsupervised volunteer position, the Mayor or the covered child or youth services provider shall inform the applicant that:

(1) A criminal background check must be conducted on the applicant; and

(2) In the case of an employee or volunteer who will be required to drive a motor vehicle to transport children in the course of performing his or her duties, a traffic record check must be conducted on the applicant.

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§ 4-1501.05. Procedure for criminal background checks

(a) The Mayor or the appropriate personnel authority shall conduct criminal background checks, including the fingerprinting of applicants, employees, and volunteers of a District agency required by this section, in accordance with FBI policies and procedures and in an FBI-approved environment.

(b) (1) An applicant, employee, or volunteer required to apply for a criminal background check under § 4-1501.03 shall submit to a criminal background check by means of fingerprint and National Criminal Information Center checks conducted by the Mayor and the FBI.

(2) The fingerprints shall be available for use by the Mayor and the FBI to conduct a local and national criminal history record check of the applicant, employee, or volunteer.

(c) The Mayor or the appropriate personnel authority shall conduct a criminal background check once the applicant, employee, or volunteer has provided:

(1) A complete set of qualified, legible fingerprints on a fingerprint card, in a form approved by the FBI;

(2) Written authorization for the Mayor to conduct a criminal background check;

(3) Written confirmation that the applicant, employee, or volunteer has been informed by the Mayor or the covered child or youth services provider that the Mayor is authorized to conduct a criminal background check on the applicant, employee, or volunteer;

(4) Any additional identification that is required, including the name, social security number, birth date, and gender of the applicant, employee, or volunteer;

(5) A signed affirmation stating whether or not the applicant, employee, or volunteer has been convicted of a crime, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity, for any sexual offenses or intrafamily offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the following felony offenses or their equivalent in another state or territory:

- (A) Murder, attempted murder, manslaughter, or arson;
- (B) Assault, assault with a dangerous weapon, mayhem, malicious disfigurement, or threats to do bodily harm;
- (C) Burglary;
- (D) Robbery;
- (E) Kidnapping;
- (F) Illegal use or possession of a firearm;
- (G) Sexual offenses, including indecent exposure; promoting, procuring, compelling, soliciting, or engaging in prostitution; corrupting minors (sexual relations with children); molesting; voyeurism; committing sex acts in public; incest; rape; sexual assault; sexual battery; or sexual abuse; but excluding sodomy between consenting adults;
- (H) Child abuse or cruelty to children; or
- (I) Unlawful distribution of or possession with intent to distribute a controlled substance;

(6) Written acknowledgment that the Mayor or the covered child or youth services provider has notified the applicant, employee, or volunteer of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report; and

(7) Written acknowledgment that the Mayor or the covered child or youth services provider may choose to deny the applicant employment or a volunteer position, or to terminate an employee or volunteer, based on the outcome of the criminal background check.

(d) Fingerprinting for the purposes of this section may be conducted by any person authorized to do so by the Mayor or the FBI.

(e) A volunteer may use the same criminal background check for a period of 2 years when applying to volunteer for multiple positions, if the volunteer provides a signed affirmation that he or she has not been convicted of a crime, has not pleaded nolo contendere, is not on probation before judgment or placement of a case upon a stet docket, and has not been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the felony offenses listed in subsection (c)(5) of this section, or their equivalent in any other state or territory, since the date of the most recent criminal background check conducted on him or her.

§ 4-1501.05a. Assessment of information obtained from criminal background check

(a) The information obtained from the criminal background check shall not create a disqualification or presumption against employment or volunteer status of the applicant unless the Mayor determines that the applicant poses a present danger to children or youth. In making this determination, the Mayor shall consider the following factors:

- (1) The specific duties and responsibilities necessarily related to the employment sought;
- (2) The bearing, if any, the criminal offense for which the person was previously convicted will have on his or her fitness or ability to perform one or more of such duties or responsibilities;
- (3) The time which has elapsed since the occurrence of the criminal offense;
- (4) The age of the person at the time of the occurrence of the criminal offense;
- (5) The frequency and seriousness of the criminal offense;
- (6) Any information produced by the person, or produced on his or her behalf, regarding his or her rehabilitation and good conduct since the occurrence of the criminal offense; and

(7) The public policy that it is beneficial generally for ex-offenders to obtain employment.

(b) The Mayor and covered child or youth services providers shall not employ or permit to serve as an unsupervised volunteer an applicant who has been convicted of, has pleaded nolo contendere to, is on probation before judgment or placement of a case on the stet docket because of, or has been found not guilty by reason of insanity for any sexual offenses involving a minor.

(c) If an application is denied because the applicant presents a present danger to children or youth, the Mayor shall inform the applicant in writing and the applicant may appeal the denial to the Commission on Human Rights within 30 days of the date of the written statement.

§ 4-1501.06. Submission of positions of covered child or youth services providers subject to criminal background checks

(a) Within 30 days of December 1, 2004, each District government agency shall submit to the Mayor the positions it has designated as subject to the criminal background check requirements of this chapter, including those of private entities that contract with the District to provide direct services to children or youth and that are under the contractual purview of the agency.

(b) Each District government agency shall submit an updated list of the positions subject to the criminal background check requirements of this chapter no later than December 1 of each year.

§ 4-1501.07. Assessment of information on covered child or youth services providers

The Mayor shall review the information on all proposed covered child or youth services providers submitted pursuant to § 4-1501.06, and any other available information, to make a decision regarding the applicability of this chapter to each child or youth services provider.

§ 4-1501.08. Confidentiality of information to be maintained

All criminal background records received by the Mayor shall be confidential and are for the exclusive use of making employment-related determinations under this chapter. The records shall not be released or otherwise disclosed to any person except when:

- (1) Required as one component of an application for employment with any covered child or youth services provider under this chapter;
- (2) Requested by the Mayor, or his or her designee, during an official inspection or investigation;
- (3) Ordered by a court;
- (4) Authorized by the written consent of the person being investigated; or
- (5) Utilized for a corrective, adverse, or administrative action in a personnel proceeding.

§ 4-1501.09. Penalty for providing false information

An applicant for employment or a volunteer position with any covered child or youth services provider who intentionally provides false information that is material to the application in the course of applying for the position shall be subject to prosecution pursuant to § 22-2405.

§ 4-1501.10. Penalties for disclosing confidential information

(a) An individual who discloses confidential information in violation of § 4-1501.08 is guilty of a criminal offense and, upon conviction, shall be fined not more than \$ 1,000 or imprisoned for not more than 180 days, or both.

(b) Prosecutions for violations of this chapter shall be brought in the Superior Court of the District of Columbia by the Office of the Attorney General.

§ 4-1501.11. Rules

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter. The rules shall include:

(1) Notice that applicants for employment with, and employees and unsupervised volunteers of, clearly identified covered child or youth services providers are required to apply for criminal background checks within 45 days from the date of publication of the rules;

(2) The location of the office in which applications for criminal background checks are to be made;

(3) Standards for determining which District agencies and private entities are considered to be covered child or youth services providers that are required to comply with the requirements of this chapter;

(4) Procedures for covered child or youth services providers to challenge the determination that they are required to comply with this chapter;

(5) Procedures for an applicant or employee to challenge allegations that the applicant or employee committed a proscribed offense; and

(6) A description of the corrective or adverse actions that may be taken against any covered child or youth services provider that, or any employee of a covered child or youth services provider who, is found to have violated the provisions of this chapter.